



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 241

[Docket DARS-2015-0050]

RIN 0750-AI74

Defense Federal Acquisition Regulation Supplement: Contract Term Limit for Shared Energy Savings Contract Services (DFARS Case 2015-D018)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the contract term for shared energy savings contract services.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2015-D018, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2015-D018" under the heading "Enter keyword or ID" and

selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015-D018." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015-D018" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2015-D018 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Janetta L. Brewer, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Janetta L. Brewer,
telephone 571-372-6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. Section 2913 requires DoD to develop a simplified

method of contracting for shared energy savings contract services that will accelerate the use of such contracts. DoD is authorized by section 2913 to contract with utility service providers to implement energy conservation measures on military bases. Section 2913 does not indicate a term limit for contracts executed under this authority.

II. Discussion and Analysis

The proposed rule revises DFARS 241.103 by adding paragraph (2) to state that contracting officers may enter into a shared energy savings contract under 10 U.S.C. 2913 for a period not-to-exceed 25 years. Experience has indicated that a period of less than 25 years is frequently insufficient to amortize the capital cost. Twenty-five years allows a greater volume and variety of energy conservation measures, and is consistent with non-DoD agency practice for similar contracts.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only seeks to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. Section 2913 requires DoD to develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of such contracts. DoD is authorized by section 2913 to contract with utility service providers to implement energy conservation measures on military bases. Section 2913 does not indicate a term limit for contracts executed under this authority, and this has created ambiguity and inconsistency throughout DoD on the term limit that is

imposed on contracts awarded under the authority. Additionally, the ambiguity has resulted in a hesitation to enter shared energy savings contracts, contrary to the intent of section 2913.

The proposed rule is not anticipated to have a significant economic impact on small business entities. The number of contract awards made under the authority of 10 U.S.C. 2913 is not currently tracked by DoD's business systems. However, it is estimated that approximately 25 shared energy savings projects are initiated across DoD each year, with approximately 17 being awarded annually. It is believed that most awards are made to large utility providers, with generally 25% or more of the renovation and operations & maintenance work executed under the awards being subcontracted to local small business by the utility provider.

This rule does not impose new recordkeeping or reporting requirements. This rule only serves to clarify the maximum contract term that may be authorized for these awards. Any burden caused by this rule is expected to be minimal and will not be any greater on small entities than it is on large businesses.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal

rules. There are no known significant alternatives to this rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015-D018), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 241

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 241 is proposed to be amended to read as follows:

PART 241—ACQUISITION OF UTILITY SERVICES

1. The authority citation for part 241 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 241.103 by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and adding a new paragraph (2) to read as follows:

241.103 Statutory and delegated authority.

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(2) The contracting officer may enter into a shared energy savings contract under 10 U.S.C. 2913 for a period not to exceed 25 years.

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